IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

David Blockowicz, Mary Blockowicz, and Lisa Blockowicz, individuals, Plaintiffs, v. Joseph David Williams and Michelle Ramey, individuals, Defendants.	)))))))))))	Civil Action No. 1:09-cv-03955 Judge Holderman Magistrate Judge Cox

MOTION FOR DEFAULT JUDGMENT, PERMANENT INJUNCTION, AND AN AWARD OF DAMAGES

Plaintiffs David Blockowicz, Mary Blockowicz and Lisa Blockowicz hereby move for a default judgment against Defendants Joseph David Williams and Michelle Ramey, pursuant to Rule 55 of the Federal Rules of Civil Procedure. Defendants have now explicitly acknowledged their notice of this lawsuit, and their intent to ignore it, in additional internet postings. As Defendants have now had ample time to respond to the Complaint, and apparently do not plan to do so, Default Judgment is appropriate. In light of Defendants' default, Plaintiffs also request entry of a permanent injunction, as well as an award of damages in the amount of twenty thousand dollars ($20,000).

I BACKGROUND

As set forth in Plaintiffs' Complaint, Motion for Preliminary Injunction, and supporting declarations, Defendants Williams and Ramey have engaged in a destructive, personal campaign to falsely attack the reputations of Plaintiffs through various internet websites. Plaintiffs' counsel attempted to serve Defendants at an Oregon address uncovered through public records searches, but that address turned out to be a UPS Store. Employees at that store confirmed Williams' and

Ramey's presence in the area, and Plaintiffs' counsel served the Complaint, Summons, and Preliminary Injunction Motion through that mailbox and through a known e-mail address. When Defendants declined to respond to Plaintiffs' counsel's letters, this Court granted Plaintiffs' Motion for Service by Special Order. (Docket Nos. 12, 15.) In that order, dated August 20, 2009, the Court noted that it "considers today as service having been effectuated."

On August 25, 2009, Plaintiff's counsel provided a copy of the order to Defendants, via their email address at loyalpatriot@gmail.com, and confirmed delivery using the RPost Registered email service. (Ex. A.) Plaintiff's counsel explicitly informed Defendants that Plaintiffs would seek a default judgment if Defendants did not answer or otherwise appear. (Id.)

Five days later, on August 30, 2009, Defendants confirmed their receipt of the pleadings, as well as their intent to ignore these Court proceedings. On that day, another comment appeared at the <complaintsboard.com> website where Defendants had earlier posted defamatory comments about Lisa Blockowicz. (Ex. B.) Though the commenter called himself/herself "Mary McBlocko," the content of the comment makes it clear that it was authored by one or both of the Defendants. Defendants state:

> Lisa Blockowicz has filed a law-suit in Illinios requesting that the court mandate the removal of these online psots [sic]. Well here is a news flash for that fat, worthless, sack of s[***]...F[***] YOU! F[***] your lawyer. F[***] the court. ***The postings will remain***. Karma is a bitch, and so are you. If you did not want people posting information about you, then you should have behaved yourself better. The interesting thing about the Blockowicz family is that they have no compunction about behaving like scumbags...they just want it to remain a private issue. Too bad. There is a reason that inbred, backward hillbillies should not be allowed to conceive children...you and Katie Kelley and are it.

(Ex. B, emphasis added). Thus, it appears that Defendants do not intend to answer the Complaint, participate in this lawsuit, or obey the Court's orders.

II THE RELEVANT LEGAL STANDARDS

An answer is ordinarily due twenty (20) days after service of the summons and complaint. Fed.R.Civ.P. 12(a)(1)(A). Accordingly, per the Court's order granting Plaintiff's motion for special service, Defendant's answer was due no later than September 9, 2009. Failure to answer the complaint or otherwise defend a complaint is grounds for a default. Fed.R.Civ.P. 55. *See also, Brach's Confections, Inc. v. Keller et al.*, 2003 WL 22225617 (N.D.Ill.); No. 94C6533, *Chase Intern. v. Link and Pan of Texas*, 1995 WL 506056(N.D.Ill. August 17, 1995.)

Where a party defaults, the well-plead allegations of the Complaint are taken as true. *e360 Insight v. The Spamhaus Project*, 500 F.3d 594, 602 (7th Cir. 2007) ("A default judgment establishes, as a matter of law, that defendants are liable to plaintiff on each cause of action alleged in the complaint."); *Black v. Lane*, 22 F.3d 1395, 1399 (7th Cir. 1994) ("When a default judgment is entered, facts alleged in the complaint may not be contested."). However, the Defendants may be entitled to an evidentiary hearing on the appropriate remedies, and in any event even if an evidentiary is not held, the Court must ensure it inquires and sets forth an adequate basis for the remedies awarded. *e360 Insight*, 500 F.3d at 604. Where the Defendants refuse to participate, it is appropriate for the Court to evaluate remedies based upon affidavits and arguments provided by the Plaintiff. Case No. 01C1V9155, *Rolex Watch U.S.A., Inc. v. Brown*, 2002 WL 1226863, *2 (S.D.N.Y. June 5, 2002) (damages determination based on affidavits and written arguments); *compare e360 Insight*, 500 F.3d at 604-605 (finding District Court did not adequately explain basis for permanent injunction).

Entry of a permanent injunction requires a showing by the Plaintiff "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *e360 Insight,* 500 F.3d at 604 (quotation omitted); Fed.R.Civ.P. 65(d). Neither the Seventh Circuit nor the Supreme Court has commented on the legality of permanent injunctions in Defamation cases but, in any event, the Court should be aware of special sensitivity to injunctions in cases such as this one because they are potentially prior restraints on free speech. *e360 Insight*, 500 F.3d at 605-606.

III ARGUMENT

A. DEFENDANTS HAVE NOTICE OF THIS MOTION AND THE PRIOR PROCEEDINGS

Plaintiffs have provided Defendants with notice of all proceedings in this case. Plaintiffs transmitted the Court's order granting Plaintiffs' Motion for Service by Special Order to Defendants via their email address, loyalpatriot@gmail.com. (Ex. A.) Plaintiffs again used the RPost Resigtered Email Service to confirm delivery to that address. And Defendants' subsequent posting at <complaintsboard.com> further confirms that they are in fact receiving Plaintiff's counsel's letters and the pleadings and orders filed and entered in this case. (Ex. B.) Plaintiff's counsel has transmitted a copy of this motion to Defendants by the same means. (Ex. C.)

B. THIS COURT SHOULD ENTER A PERMANENT INJUNCTION

There are two substantive issues to consider in issuing a permanent injunction. The first is whether Plaintiffs have met the traditional four-factor test for entry of a permanent injunction. Because much of that analysis is already covered in Plaintiffs' pending Motion for Preliminary Injunction, to which Defendants have not responded, that subject is treated only briefly below. The second substantive issue is whether a permanent injunction is appropriate in a defamation case and, perhaps more to the point, what is the appropriate scope of the permanent injunction. Plaintiffs believe, in light of Defendants' egregious actions, itinerant nature, and stated intent to cause further harm, entry of a focused injunction is appropriate.

A permanent injunction is appropriate and necessary. By their default, Defendants have effectively admitted the well-pled allegations of Plaintiffs' complaint. Accordingly, Defendants are presumed to have knowingly and maliciously defamed Plaintiffs. (Compl., Ex. D, ¶¶ 9-19.) Much of those statements constitute defamation *per se* and, as a result, the harm is by definition irreparable. (See Memorandum in Support of Motion for Preliminary Injunction, Docket No. 5, a courtesy copy of which is provided herewith, pp. 5-11, 16.) Monetary damages will be all but useless -- Defendants are essentially itinerant, moving from place to place on a regular basis, appear to have no assets, and refuse to even reveal their current address. The balance of the hardships clearly favors Plaintiffs. (Docket No. 5, p. 16.) Finally, the public interest favors an injunction, for, while free speech is highly valued and fiercely protected, the right to free speech is not to be used to bludgeon other persons from afar with false statements while avoiding all consequences.

An appropriately focused permanent injunction is appropriate under the facts and circumstances of this case. Initially, several aspects of the proposed injunction merely address past conduct, and therefore those provisions raise no free speech concerns. As part of the injunction, Plaintiffs seek an order allowing them to effect the removal of the defamatory statements from third party websites, since Defendants obviously cannot be relied upon to do it themselves. (Ex. B, noting that the "postings will remain.") The proposed order also provides a procedure by which Plaintiffs can obtain further orders directing third parties to remove any defamatory statements that Defendants might republish elsewhere. These provisions all address past conduct or statements already deemed defamatory.

The proposed injunction does address future conduct -- but only to the extent that such conduct would constitute defamation. Thus, the proposed order is not a wholesale bar stopping

Defendants from making statements about Plaintiffs, but merely bars any continued malicious conduct. This proposed order is absolutely necessary because, given Defendants' itinerant nature and ready access to the internet, there simply is no other relief available and the threat of monetary damages is nearly meaningless. Indeed, Defendants have announced their intent to continue their behavior. (Ex. B.) Moreover, this provision of the order again provides procedures which protect the Defendants' rights. The Court must approve any further takedown orders, and the Court will have an opportunity to evaluate the order's ongoing effect, if any, on Defendants' free speech rights.

C. THE COURT SHOULD AWARD DAMAGES

While it may very well be impossible to collect a single penny of damages in this case, a damages award is appropriate for Defendants' past defamation *per se* conduct. The Plaintiffs' initial declarations filed in this case set forth some of the reputational and emotional distress damages caused by Defendants' conduct. But Defendants' refusal to participate in this case has robbed Plaintiffs of the opportunity to further explore their bases for damages. For example, discovery in this case might have shown that Defendants posted their defamatory statements at many other, as yet undiscovered, public forums, might have revealed specific questions to Defendants from individuals inquiring about the defamatory statements, and might have revealed additional specific employers, clients and acquaintances to whom Defendants published the statements.

Plaintiffs submit that the most appropriate method of estimating damages in this case, given Defendants' refusal to participate, is to evaluate the attorney's fees and costs incurred by Plaintiffs, which serve as a minimum estimate of damages. In other words, Plaintiffs' expenses incurred in attorney's fees represent ***at least*** the amount they were damaged by Defendants' conduct. Defendants' attorney's fees to date are approximately twenty thousand dollars ($20,000). (Nelson Declaration, Ex. E.)

IV CONCLUSION

WHEREFORE, Plaintiffs respectfully move this Court for an order:

A. Entering a Default Judgment against Defendants on the issue of liability for defamation, false light, and reckless infliction of emotional distress;

B. Deeming all well-plead allegations Plaintiff's Complaint to be true;

C. Entering a permanent injunction against Defendants, in the form of Exhibit F, barring Defendants from future acts of defamation; and

D. Awarding Plaintiffs nominal damages in the amount of $20,000.

Respectfully submitted,

Dated: October 1, 2009

/s/ Cameron M. Nelson

Cameron M. Nelson
Kevin J. O'Shea
GREENBERG TRAURIG LLP
77 W. Wacker Drive, Ste. 2500
Chicago, IL 60601
312-456-8400

CHI 58,661,068v2 10-1-09